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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KATHLEEN ESPINOSA, individually and as  
personal representative of the Estate of decedent  
ASA SULLIVAN; A.S., by and through his  
Guardian ad Litem, NICOLE GUERRA;

Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation; HEATHER FONG, in  
her capacity as Chief of Police for the CITY  
AND COUNTY OF SAN FRANCISCO; JOHN  
KEESOR, individually, and in his capacity as a  
police officer for the CITY AND COUNTY OF  
SAN FRANCISCO; MICHELLE ALVIS,  
individually and in her capacity as a police  
officer for the CITY AND COUNTY OF SAN  
FRANCISCO; PAUL MORGADO, individually  
and in his capacity as a police officer for the  
CITY AND COUNTY OF SAN FRANCISCO;  
and, San Francisco police officers DOES 1-25,  
inclusive,

Defendants.

Case No. C 06 04686 JSW

**NOTICE AND ADMINISTRATIVE  
MOTION TO VACATE PRE-TRIAL  
CONFERENCE AND TRIAL DATES AND  
(PROPOSED) ORDER**

**[STIPULATED]**

*No hearing date pursuant to Civil L.R. 7-11*

Honorable Jeffrey S. White

**NOTICE**

NOTICE TO ALL COUNSEL OF RECORD IN THE PRESENT CASE:

This Motion for Administrative Relief is brought by Plaintiffs ESPINOSA, et al. and  
stipulated to by Defendants CITY AND COUNTY OF SAN FRANCISCO, et al, pursuant to Civil

1 Local Rules 7-11. No hearing date is scheduled, pursuant to Civ. L. R. 7-11.

2 Because the defendant police officers have filed an interlocutory appeal of the Court's August  
3 5, 2008 order denying their claim of qualified immunity, the Court should vacate the Pre-Trial  
4 Conference, Pre-trial schedule, and Trial date in this matter. This request and administrative motion  
5 is based on the divestment of the Court's jurisdiction of this action upon the filing of appeal with the  
6 Ninth Circuit Court of Appeals, which imposes an automatic stay on the District Court action. *U.S. v.*  
7 *Clairborne*, 727 F.2d 842, 850 (9<sup>th</sup> Cir. 1984); *Chumain v. Wright* 960 F.2d 104, 105 n. 1 (9<sup>th</sup> Cir.  
8 1992)

9  
10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 On August 5, 2008, the Court issued its Order Re Parties' Cross-Motions for Summary  
12 Judgment, which denied Plaintiffs' Motion for Summary Judgment and granted in part and denied in  
13 part Defendants' Motion for Summary Judgment. Defendants' Motion for Summary Judgment with  
14 respect to qualified immunity was specifically denied by the Court. On August 15, 2008, Defendants  
15 filed a notice of appeal of this Court's Order Re Parties' Cross-Motions for Summary Judgment with  
16 the Ninth Circuit Court of Appeal. (Exh. A.) Defendants' appeal includes notice of appellate review  
17 of the Court's Order regarding qualified immunity. The Ninth Circuit Court of Appeals Time  
18 Schedule Order was then filed with this Court on August 25, 2008.

19 Currently, the Pre-Trial Conference date in this Court remains set for October 6, 2008, there  
20 are several deadlines for pretrial submissions, and the trial in this Court is set for October 27, 2008.

21 A district court's denial of a summary judgment motion on the qualified immunity defense is  
22 appealable under certain circumstances notwithstanding the absence of a final judgment.

23 *Cunningham v. City of Wenatchee*, 345 F.3d 802, 807-08 (9<sup>th</sup> Cir. 2003). The filing of an appeal of a  
24 ruling denying qualified immunity imposes an automatic stay that divests the district court of  
25 jurisdiction to proceed with trial. *Chumain v. Wright*, 960 F.2d 104, 105 (9<sup>th</sup> Cir. 1992). The thirty  
26 day time for filing a notice of appeal begins to run upon the entry of the order denying the qualified  
27 immunity defense. *Fairly v. Fermaint*, 482 F.3d 897, 901 (7<sup>th</sup> Cir. 2007). Defendants filed a timely  
28 notice of appeal.

For the foregoing reasons, the Court should vacate all pending dates in this action, and await the outcome of Defendants' appeal to the Ninth Circuit Court of Appeals. Defendants stipulate to the requested relief.

Respectfully submitted,

Dated: September 12, 2008

**The Law Offices of John L. Burris**

/s/   
Ben Nisenbaum  
Attorney for Plaintiffs

STIPULATED:

Dated: September 15, 2008

DENNIS J. HERRERA  
City Attorney  
JOANNE HOEPER  
Chief Trial Attorney  
BLAKE P. LOEBS  
Deputy City Attorney  
PETER J. KEITH  
Deputy City Attorney

By: /s/ \_\_\_\_\_  
PETER J. KEITH  
Attorneys for Defendants  
CITY AND COUNTY OF SAN FRANCISCO,  
et al.

**(proposed) ORDER**

Defendant officers' filing of an interlocutory appeal of the Court's August 5, 2008 Order denying their claim of qualified immunity imposes an automatic stay. Accordingly, the Court hereby vacates all pending dates in the above-noted action, including the pre-trial deadlines, the Pre-Trial Conference in this matter set for October 6, 2008, and the Trial Date of October 27, 2008.

Dated: September 17, 2008

  
UNITED STATES DISTRICT COURT JUDGE  
Honorable Jeffrey S. White